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Sales

SALES: OF AQUATIC LANDS

Discussion on sales: of aquatic lands

Numerous statutes discuss the rules and procedures for selling state-owned tidelands or shorelands. However, all these statutes have been overruled by RCW 79.94.150, which prohibits sales of state-owned aquatic lands to anyone other than a public entity. Furthermore, such sales must be solely for public use. There are two exceptions: second class tidelands may be sold under certain conditions; and accreted tidelands and shorelands may be sold to the owner of adjacent tidelands or shorelands. For more information on these sales, SEE ALSO: State-owned aquatic lands.

SALES: OF GEODUCKS

SEE: Geoducks

SALES: OF SAND AND GRAVEL

SEE: Sand and gravel

SALES: OF SHELLFISH

SEE: Shellfish

SALES: OF VALUABLE MATERIALS

RCW 79.90.060: "Valuable materials."
Whenever used in chapters 79.90 through 79.96 RCW the term "valuable materials" when referring to aquatic lands means any product or material within or upon said lands, such as forest products, forage, stone, gravel, sand, peat, agricultural crops, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapters 79.01 and 79.14 RCW.

Discussion on sales: of valuable materials

The department historically has sold commodities and valuable materials from the beds, tidelands, and shorelands of state-owned aquatic lands. Several types of marketable commodities are located on state-owned aquatic lands. A decision to sell such commodities is based on the same principles that apply to other land management decisions, in that the sale must provide benefits to the public, must ensure environmental protection, and otherwise meet the department's overall statutory responsibilities. For more information on these sales, SEE ALSO: Sand and gravel.

Sand and gravel

Discussion on sand and gravel

Sand and gravel in streams, rivers, and bedlands have historically been gathered and used for a variety of purposes. However, removing sand and gravel may have serious environmental impacts. The department must ensure protection of the environment, and ensure that these impacts are eliminated or fully mitigated before allowing sand and gravel to be collected from state-owned aquatic lands. SEE ALSO: Environmental protection.

Sand and gravel removal can directly or indirectly harm critical habitat, most importantly habitat needed by fish. Rivers provide both rearing and spawning habitat for many

fish species, notably salmon and trout. Removal of sand and gravel from rivers can stress or kill fish populations through:

- Creating extreme turbidity and cloudiness.
- Redirecting stream flow and thereby stranding fish, especially juveniles, on excavated bars, within pits or in de-watered channels.
- Covering or disturbing incubating eggs in the gravel.
- Changing water temperature.

In addition, sand and gravel removal can cause:

- Loss of streamside vegetation.
- Removal of large woody debris (a component of fish habitat).
- Loss of stream habitat diversity (pools, riffles, side channels).
- Loss of bed stability, especially spawning riffles.

When lakes and river levels are low in the summer, sand and gravel has sometimes been gathered by scraping the tops of sandbars and exposed river beds. This practice is known as scalping. Even though the removal operation may not enter the water, scalping often has negative environmental impacts, as it can remove rearing and spawning habitat for many fish species. SEE ALSO: River management.

The department will not allow removal of sand and gravel unless it can be assured that all the impacts described above can be avoided or otherwise appropriately mitigated. In particular, with the recent listing of several salmon species as endangered or threatened, the department will not allow any such removal if there is a significant possibility of adverse impacts to salmon or salmon habitat. SEE ALSO: Endangered Species Act.

If the department does allow sand and gravel removal, the party conducting the removal also must acquire several regulatory permits. The reviews conducted through these permit processes may help the department assess the

impacts of the proposed sand and gravel removal on aquatic habitats and suggest conditions necessary to eliminate or mitigate those impacts. Environmental restrictions associated with these permits generally prohibit sand and gravel removal when there are high water flows or fish spawning. SEE ALSO: Regulatory agencies and permits.

When sand and gravel is contaminated and being disposed of at a site for contaminated sediments, or when it is gathered and disposed of in the water as part of a navigational dredging operation, that activity is covered by the programs or guidance on the use of sediments, dredging, and dredge disposal. SEE ALSO: Sediments.

SAND AND GRAVEL: SALES

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RCW 79.90.300: Sale of rock, gravel, sand, silt, and other valuable materials.

The department of natural resources, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any tidelands or shorelands belonging to the state and providing for payment to be made therefor by such royalty as the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon aquatic lands the department shall inspect and appraise the value of the material in the application.

RCW 79.90.310: Sale of rock, gravel, sand and silt--Application--Terms of lease or contract--Bond--Payment--Reports.

Each application made pursuant to RCW 79.90.300 shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials. The department of natural resources may in its discretion include in any lease or contract entered into pursuant to RCW 79.90.300 through 79.90.320, such terms and conditions deemed necessary by the department to protect the interests of the state. In each such lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the performance of the terms and conditions of such contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment therefor made on the basis of the royalty provided in the lease or contract.

RCW 79.90.320: Sale of rock, gravel, sand and silt--Investigation, audit of books of person removing.

The department of natural resources may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any such lease or contract under RCW 79.90.300 and 79.90.310 and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials.

RCW 79.90.325: Contract for sale of rock, gravel, etc.--Royalties--Consideration of flood protection value.

Whenever, pursuant to RCW 79.01.134, the commissioner of public lands enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the commissioner shall, when establishing a royalty, take into consideration flood

protection value to the public that will arise as a result of such removal.

WAC 332-30-126: Sand and gravel extraction fees.

This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) Public auction or negotiation. The royalty for sand, gravel, stone or other aggregate removed from state-owned aquatic lands shall be determined through public auction or negotiation.

(2) Royalty rate. A negotiated royalty shall reflect the current fair market value of the material in place. The "income approach" appraisal technique will normally be used to determine fair market value. Factors considered include, but are not limited to:

(a) The wholesale value of similar material, based on a survey of aggregate producers in the region or market area;

(b) Site specific cost factors including, but not limited to:

(i) Homogeneity of material;

(ii) Access;

(iii) Regulatory permits;

(iv) Production costs.

(3) Adjustments to initial royalty rate.

(a) Inflation. Annual inflation adjustments to the initial royalty rate shall be based on changes in the Producer Price Index (PPI) for the commodities of sand, gravel, and stone, as published by the United States Department of Commerce, Bureau of Labor Statistics. Annual PPI adjustments to the initial royalty rate shall begin one year after the effective date of establishment of each contract's royalty rate pursuant to subsection (1) of this section.

(b) Flood control. Initial negotiated royalty rates may be adjusted downward, depending on the degree to which removal of the material will enhance flood control.

(i) Any adjustment shall be based on hydrologic benefit identified in an approved comprehensive flood control management plan adopted by a general purpose local government and any state or federal agency with jurisdiction.

(ii) The department, prior to approving any proposed royalty rate adjustment for flood control benefits, may review the flood control plan to determine whether the

material removal actually reduces the potential for flooding.

(4) Payments. Royalty payments may be paid monthly or quarterly based on the volume of material sold, transferred from control of the contract holder, or otherwise utilized for purposes of the contract.

(5) Stockpiling. Stockpiling of removed material may be permitted.

(a) Material will be stockpiled separately from other material owned or controlled by the contract holder.

(b) Bonding or other satisfactory security will be required to cover the value of stockpiled material.

(6) Appeals. The state's determination of royalty rates set under subsections (2) and (3) of this section, are appealable through WAC 332-30-128.

WAC 332-30-163: River management.

(10) Sand and gravel removals will not be permitted below the wetted perimeter of navigable rivers except as authorized under a departments of fisheries and game hydraulics permit (RCW 75.20.100). Such removals may be authorized for maintenance and improvement of navigational channels.

(11) Sand and gravel removals above the wetted perimeter of a navigable river (which are not harmful to public health and safety) will be considered when any or all of the following situations exist:

(a) No alternative local upland source is available, and then the amount of such removals will be determined on a case by case basis after consideration of existing state and local regulations.

(b) The removal is designed to create or improve a feature such as a pond, wetland or other habitat valuable for fish and wildlife.

(c) The removal provides recreational benefits.

(d) The removal will aid in reducing a detrimental accumulation of aggregates in downstream lakes and reservoirs.

(e) The removal will aid in reducing damage to private or public land and property abutting a navigable river.

(12) Sand and gravel removals above the wetted perimeter of a navigable river will not be considered when:

(a) The location of such material is below a dam and has inadequate supplementary feeding of gravel or sand.

(b) Detached bars and islands are involved.

(c) Removal will cause unstable hydraulic conditions detrimental to fish, wildlife, public health and safety.

(d) Removal will impact esthetics of nearby recreational facilities.

(e) Removal will result in negative water quality according to department of ecology standards.

(13) Bank dumping and junk revetment will not be permitted on aquatic lands.

(14) Sand and gravel removal leases shall be conditioned to allow removal of only that amount which is naturally replenished on an annual basis.

Discussion on sand and gravel: sales

The department has the authority to sell sand and gravel from state-owned aquatic lands. A decision to sell these commodities is based on the same principles that apply to other land management decisions, in that the sale must provide benefits to the public, must ensure environmental protection, and otherwise meet the department's overall statutory responsibilities. Such removal must be done in an environmentally sensitive manner. SEE ALSO: Public benefits; Environmental protection.

Sales of sand and gravel from state-owned aquatic lands have decreased over the years for several reasons:

- Removal of sand and gravel has negative impacts on habitat.
- Sand and gravel removal is no longer used for flood control.
- The supply and quality of river gravel varies at a given bar site as water flow continually sorts and moves the material.
- Areas where gravel and sand could be removed are often remote and difficult to access, leading to higher transport and processing costs.

- Upland sources of gravel currently provide the majority of material because of the more dependable consistency and year round availability.

The department has adopted rules for establishing fees for the extraction of sand and gravel, in WAC 332-30-126. Prices for sand and gravel can be set through auction or sealed bid. Royalty sales may be made through auction, sealed bid or negotiation.

Royalties established though negotiation should reflect the current fair market value of the material. Normally, negotiations are based on surveys of the local wholesale (as opposed to retail) market, with the department seeking to obtain a price comparable to that which other pit owners receive for similar material. Generally, the Regions set a minimum price after completing research on fair market value. This minimum varies depending on the location and quality of the material, end user, and the nature of the project. SEE ALSO: Valuation.

If no local wholesale market comparisons are available, the department should use an income approach based on the retail market to determine fair market value. That is, the department should begin with the retail price, subtract the buyer's cost of mining and transporting the material or otherwise preparing it for use or sale, and subtract a reasonable profit or rate of return to determine fair market value equivalent to the wholesale price.

A number of factors may affect this cost. For example, clean sediment that became available as a result of the Mt. St. Helens eruption may sell for less because there is so much material available and there is a limited market for it.

The quality of the material may also affect the cost. For example, freshly dredged material that still contains living organisms may have greater value for habitat restoration projects, and clean white sand used for golf courses may bring higher prices than coarser material.

In calculating the rate charged to customers, the department should consider:

- Fair market value of the material, determined by surveying and averaging the rates charged by private suppliers in the area.
- Any responsibilities transferred to the purchaser under the contract, such as any financial liabilities.
- Complexity of permitting and mitigation required at the site.
- Complexity of the reclamation required by the department as landowner, as well as by the Surface Mine Reclamation Act.
- Amount of material to be removed.
- The use and value of the material to the end user.
- Amount of processing that is necessary to make a salable or usable product.
- Location of the deposit in relation to the end use or market.
- Quality of the material.
- Whether the removal of the material will enhance flood control.

Prices at or close to retail are usually charged for small or direct sales, where the operator is the end user, little or no processing is required after mining to obtain the desired end product, and little or no reclamation is required. Retail rates can be determined through surveying and averaging the rates charged for similar material by private suppliers in the area.

The department charges retail prices for the pit run less estimated operating costs on sales less than $1000. A profit factor for the purchaser is generally deducted from the proposed price. Generally, though, it is more common for people needing small amounts of material to go to private vendors.

Typically, for larger sales of sand, gravel, and rock, the purchaser accepts a large responsibility for maintaining the property and acts as the marketing agent for the sale of state-owned materials. In such an operation, the purchaser takes all of the financial risk and is responsible for creating and developing a market for the product. The department in turn takes a royalty, which is either a fixed rate per unit or a percentage of revenues.

If a purchaser of large amounts of sand and gravel wishes to use state-owned lands as sediment de-watering areas or storage areas, the department should also collect rent for use of these lands.

Salvage logs

SEE: Logs, salvage.

Sediments

Discussion on sediments

Aquatic lands consist of bedrock and the overlying sediments, which range from soft mud and particulates to sand and coarse gravel. These sediments are sometimes dredged or collected for many purposes. Unfortunately, pollutants released into aquatic environments tend to be absorbed by and accumulate in these sediments, especially in urban bays.

SEDIMENTS: CONTAMINATED SEDIMENTS

Discussion on sediments: contaminated sediments

Contamination of aquatic sediments can have far-reaching and long-lasting effects on state-owned aquatic lands. Contaminated sediments are those which have acute or chronic adverse effects on biological resources or pose a significant health risk to humans. Contaminated sediments commonly contain organic chemicals, heavy metals, and biologically active material.

Sediment contamination can affect:

- Water drinkability.
- The ability of aquatic plants and animals to take in nutrients and reproduce.
- The health of humans and animals living in proximity to contaminated areas.
- Future uses of aquatic lands.

Contaminated sediments cannot support the variety of aquatic life usually found in a particular habitat. Sediment changes also may weaken the natural balance, making native species vulnerable to more aggressive invasive exotic species, and changing the aquatic life in and on the sediment.

Development has caused certain heavy metals such as mercury, or organic chemicals such as creosote, to be mixed with sediments. An increase in organic material, such as wood debris, may act as a contaminant in the sediment as well. Contamination can cause chronic or acute effects on the biota normally found there. For example, at paper processing plants, wood chips off-loaded from barges may blow off the conveyor belt onto the tide flats. These chips become waterlogged and sink to the bottom. Because they

are organic, they decompose and deplete the sediments of oxygen needed by the worms and crustacea that live there. SEE ALSO: Log booming and storage.

Naturally occurring conditions also may cause problems. For instance, many areas of Puget Sound have naturally elevated levels of silver. If an organism is sensitive to silver, a population may be reduced in areas where silver levels are high. This is considered to be an elevated natural background level rather than a contamination. Either way, adding more silver to the sediments would cause a further reduction in reproduction, decrease biodiversity, and reduce the overall biological functions of the area.

Some typical causes of sediment contamination include:

- Waste water disposal
- Pulp and paper milling
- Aluminum smelting
- Oil refining
- Boat repair and construction
- Commercial moorage
- Agricultural runoff
- Urban runoff and pollution from non-point sources
- Illegal dumping
- Oil and chemical spills

The most important task in managing contaminated sediments is to try to avoid the contamination in the first place. To this end, virtually every use authorization on state-owned aquatic lands becomes a sediments issue. The department must take all possible steps in every use authorization to prevent contamination of sediments. SEE ALSO: Use authorizations; Environmental protection.

Contaminants flow into aquatic lands from point sources and non-point sources. A point source is an identifiable discharger such as a discrete pipe or structure that discharges treated or untreated waste water or storm water. Pipes, tunnels, and ditches are common examples of point

sources. The department must closely scrutinize point source discharges that occupy or discharge onto state-owned aquatic lands. SEE ALSO: Outfalls.

In contrast, a non-point source is a source of water pollution not associated with an identifiable discharger or discrete pipe or structure. Examples of non-point source pollution include failing septic tanks and agricultural runoff. The department has far less authority over non-point sources that originate away from state-owned aquatic lands, but can require operators on state-owned aquatic lands to properly address their own non-point contributions.

The most commonly suggested methods for addressing contaminated sediments are to:

- Cap the contaminated sediments.
- Dredge and move the contaminated sediments to a Confined Aquatic Disposal site.
- Chemically or biologically treat the contaminated sediments.
- Dredge and move the contaminated sediments to an upland disposal site.

A cap is a layer of clean sediments laid over the contaminated sediments, usually without moving the contaminated sediments. A cap typically does the least to remove the contaminants from the aquatic environment. Also, a cap can restrict any uses that would disturb the sediments, such as dredging or anchoring.

A Confined Aquatic Disposal (CAD) site may be located either near the shore or in deep water. Creating a CAD usually involves digging a depression, stabilizing the sides, filling the depression with contaminated sediments and contouring the top. One form of CAD is a nearshore confined fill, which means placing the sediments in a retaining structure near the shore and usually paving over it. This procedure in effect creates uplands and eliminates aquatic lands; if the aquatic lands were state-owned then the

land is still managed by the department. All CADs have a limited capacity, and provisions must be made to deal with contaminated sediments once a CAD is full. Like caps, CADs, especially in shallow waters, may restrict the possible uses of state-owned aquatic lands.

Chemical and biological treatment methods are designed to remove or neutralize the contamination from within the sediment. These methods are mostly experimental and still being studied.

Upland disposal involves transporting the sediments to either an ordinary landfill or a landfill designed for hazardous materials, if the sediments are highly toxic. Upland disposal typically does the most to remove the contaminants from the aquatic environment.

There is no simple rule on the best disposal option for contaminated sediments. Most other parties, especially potentially liable parties, are primarily interested in the lowest cost option. As land manager, however, the department's primary obligation is to seek the most long-term environmentally acceptable option. At a minimum, the department must be assured that the environmental effects of all reasonable alternatives, including upland disposal, have been thoroughly evaluated. For example, there should be an analysis of the likelihood and effects of the contamination escaping the disposal area. If the material is placed in a CAD, this would mean evaluating whether the site is at risk of submarine landslides and earthquakes that would disrupt the confinement.

Any contaminated sediment disposal option must be designed and considered within a larger plan for the environmental protection and restoration of the entire bay or river system. The ultimate goal of the department's sediment management efforts is to restore the aquatic resources and habitat, not merely to resolve the financial liability of any given party.

The need for clean sediments to cap contaminated sediments is growing. As a result, a market is developing for sediments that were once considered worthless. Clean sediments can be used for many purposes, including capping of contaminated sediment deposits, filling of aquatic lands, upland construction fill material, and golf course sand traps. Sediments used for these purposes are charged fair market value. For more information on sale of materials, SEE ALSO: Sand and gravel.

SEDIMENTS: DISPOSAL MANAGEMENT PROGRAMS, SITES, AND FEES

RCW 79.90.550: Aquatic land disposal sites--Legislative findings.

The legislature finds that the department of natural resources provides, manages, and monitors aquatic land disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States corps of engineers, and the United States environmental protection agency in cooperation with the *Puget Sound water quality authority. These disposal sites are essential to the commerce and well being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

RCW 79.90.150: Material removed for channel or harbor improvement or flood control--Use for public purpose.

When gravel, rock, sand, silt or other material from any aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of such material may be authorized by the department of natural

resources for a public purpose on land owned or leased by the state or any municipality, county, or public corporation: PROVIDED, That when no public land site is available for deposit of such material, its deposit on private land with the landowner's permission is authorized and may be designated by the department of natural resources to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging such use shall first obtain written permission from the department of natural resources. No payment of royalty shall be required for such gravel, rock, sand, silt, or other material used for such public purpose, but a charge will be made if such material is subsequently sold or used for some other purpose: PROVIDED, That the department may authorize such public agency or private landowner to dispose of such material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of RCW 75.20.100 or eliminate the necessity of obtaining a permit for such removal from other state or federal agencies as otherwise required by law.

RCW 79.90.555: Aquatic land dredged material disposal site account.

The aquatic land dredged material disposal site account is hereby established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department of natural resources from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW.

RCW 79.90.560: Fees for use of aquatic land dredged material disposal sites authorized.

The department of natural resources shall, from time to time, estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of such sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.90.555.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(9) Open water disposal sites shall be provided on beds of navigable waters for certain materials that are approved for such disposal by regulatory agencies and have no beneficial value.

WAC 332-30-166: Open water disposal sites.

(1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.
(2) Material may be disposed of on state-owned aquatic land only at approved open water disposal sites and only after authorization has been obtained from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the interagency open water disposal site evaluation committee for establishment of a new site.
(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.
(4) The department will only issue authorization for use of the site after:

(a) The environmental protection agency and department of ecology notify the department that, in accordance with Sections 404 and 401, respectively, of the Federal Clean Water Act, the dredged materials are suitable for in-water disposal and do not appear to create a threat to human health, welfare, or the environment; and

(b) All necessary federal, state, and local permits are acquired.

(5) Any use authorization granted by the department shall be subject to the terms and conditions of any required federal, state, or local permits.

(6) The department shall suspend or terminate any authorization to use a site upon the expiration of any required permit.

(7) All leases for use of a designated site must require notification to DNR in Olympia twenty-four hours prior to each use. DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.

(8) Pipeline disposal of material to an established disposal site will require special consideration.

(9) Fees will be charged at rates sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A penalty fee may be charged for unauthorized dumping or dumping beyond the lease site. Army Corps of Engineers navigation channel maintenance projects where there is no local sponsor are exempt from this fee schedule.

FEES

(a) Puget Sound and Strait of Juan De Fuca: All disposal sites $0.45 per cubic yard (c.y.), $2,000 minimum

(b) Grays Harbor/Willapa Bay: All disposal sites $0.10 per cubic yard (c.y.), minimum fee $300.00

(c) Damage fee - $5.00/cubic yard

(10) Open water disposal site selection. Sites are selected and managed by the department with the advice of the interagency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee has developed a series of guidelines to be used in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the area, and to minimize the disruption of normal

human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being dumped.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems which exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(ii) Placement of temporary site marking buoys may be required.

(k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.

(l) Special consideration should be given to placing material at a site where it will enhance the habitat for living resources.

(m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(11) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.

Discussion on sediments: disposal management programs, sites, and fees

Open-water disposal of dredged material is an environmentally-charged issue. Dredging and open-water disposal was virtually halted in Puget Sound in the early

1980s because of concerns about the environmental impacts from historic dredge disposal practices.

Several state and federal agencies have overlapping authority regarding management of dredged material, requiring significant interagency coordination. In Washington, this is done primarily through the Dredged Material Management Program (DMMP) and the Cooperative Sediment Management Program (CSMP). The DMMP consists of the Puget Sound Dredge Disposal Analysis (PSSDA), the Grays Harbor/Willapa Bay Dredge Disposal Analysis (GH/WBDDA), and the Columbia River Evaluation Framework (CREF). These programs pertain to different environmental conditions and concerns in various areas.

PSDDA governs open water disposal of materials from dredging of Puget Sound harbors and waterways. Four PSDDA agencies – the Department of Natural Resources, Department of Ecology, Army Corps of Engineers and the Environmental Protection Agency – operate cooperatively to develop standards, protocols and routines for joint and systematic sediment disposal decisions. The program oversees all dredged material testing and disposal activities in Puget Sound, and has a rigorous sediment testing protocol to evaluate whether material is suitable for open-water disposal sites.

This program provides a cost-effective and environmentally-sound process for managing clean or slightly-contaminated dredged material. Dredged disposal operations are limited to minimize impacts to aquatic resources, such as benthic organisms and out-migrating salmon.

Each major urban area or embayment has an associated dredged material disposal site. These are designated as either dispersive or non-dispersive. Currents are considered more likely to move the deposited material around at dispersive sites, while materials deposited at non-dispersive

sites are far more likely to remain on site. This distinction affects the types of material that can be deposited.

There are currently eight open-water disposal sites in Puget Sound:

Dispersive sites:
- Rosario Straits
- Port Townsend
- Port Angeles

Non-dispersive sites:
- Bellingham Bay
- Port Gardner
- Elliott Bay
- Commencement Bay
- Ketron Island

The PSDDA program also serves as the model for managing dredging and dredged material issues outside of Puget Sound. It resulted in both the Grays Harbor/Willapa Bay Dredge Disposal Analysis and the Columbia River Evaluation Framework. Although program specifics differ, the four PSDDA agencies direct dredging and disposal activities in these areas in a similar manner.

Dredging and dredged material disposal in the Columbia River system is managed largely by the Portland, Oregon District of the Army Corps of Engineers. Environmental concerns, such as sediment testing procedures, are managed according to a framework agreed to by the department and other Washington, Oregon, and federal agencies. The department is often involved in sales of dredged sand in this region because the sand in the Columbia River is relatively clean.

SEDIMENTS: DREDGING

WAC 332-30-106 Definitions.
(13) "Dredging" means enlarging or cleaning out a river channel, harbor, etc.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.
(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses in areas requiring extensive maintenance dredging except the Columbia River.

Discussion on sediments: dredging

Dredging is used to maintain or increase the navigability of waterways, facilitate access to shore-based development, clean up contaminated sediments, or gather clean sediment for various purposes. Navigation is the most common reason for dredging. Silt, sand, and gravel moving into and accumulating in waterways can impair navigation by reducing required depths. The Army Corps of Engineers is responsible for dredging of federal waterways. Other public and private entities also are involved with operational, maintenance, and developmental dredging. SEE ALSO: Navigation.

The department should carefully scrutinize any project involving dredging activities for its potential impacts to aquatic habitat and vegetation, recreational activities, and other public benefits of aquatic resources. This scrutiny must consider both the area dredged and the area where the dredged material is to be deposited. Some dredging activities are viewed as routine. That is, once the original approval has been granted, routine dredging can continue without further authorization, for instance, to maintain navigation in existing channels. However, even this dredging must have opportunities for review if, for example, conditions change or new environmental protections are found necessary.

The Army Corps of Engineers is responsible for dredging navigational channels of state-owned aquatic lands to provide continued navigational opportunities in the waters of the state. The Corps jointly shares responsibility with EPA for regulating and disposing of the dredged material at approved open water disposal sites.

The department and the Department of Ecology have responsibility for assuring that dredging and disposal activities which take place in state waters comply with applicable state regulations (Ecology) and use authorizations (DNR). A memorandum of agreement between the Corps, EPA, the department, and Ecology guides the work of dredging and disposal in state waters.

SEDIMENTS: USE AUTHORIZATIONS

Discussion on sediments: use authorizations

The department should carefully scrutinize any project involving the movement of sediments for its potential impacts to aquatic habitat and vegetation, recreational activities, and other public benefits of aquatic resources. This scrutiny must consider both the area from which sediments are removed and the area where the material is to be deposited.

If sediments are moved in any way, they must be sampled and characterized under the appropriate program. The department may require the project proponent to sample sediments for contamination and initiate cleanup before entering into an authorization even if the project doesn't require removal or disposal of sediments.

There are two methods of testing: chemical and biological. Chemical testing is usually done first, as it is easier and less expensive than biological testing. In this procedure, sediments are tested for concentration of certain chemicals. If the concentrations are below the acceptable level, the material can be disposed in an unconfined site. If the

chemical concentration of the target chemicals is above the acceptable levels, biological response testing may be done. This procedure involves monitoring benthic organism mortality.

The state has paid millions of dollars for cleanup of contaminated sediments. It is always more expensive, in both monetary and non-monetary terms, to clean up contamination than it is to prevent it, so special care should be taken to ensure that proposed uses for aquatic lands are examined to identify possible risks of sediment contamination. This should include careful analysis of:

- Sensitive habitat in the area.
- Hazardous materials that may be used or distributed.
- Outfalls.
- Storage and disposal of solid and/or dangerous waste.
- Transportation required.
- Stormwater controls.
- Spill response plans.
- Relevant "best management practices."

The department receives use authorization applications for a variety of activities that have the potential to cause or increase sediment contamination and thereby damage the environment and trigger the state's liability. To reduce the risk of contamination, land managers should do as much of the following as is appropriate to each application:

- Require a review of existing environmental information and site records to determine the potential for past or on-going sediment contamination. This is known as a Phase 1 environmental assessment.

- Confirm that the sediment has been properly characterized and that any contamination has been identified, and require the applicant to conduct any needed sampling or testing.

- Address how any existing contamination must be handled by the applicant.

- Confirm with the Department of Ecology that all Clean Water Act section 401/404 checklist items have been met.

- Review the proposal for any potential point or non-point pollution sources, and identify the likely type and quantity of any contaminants.

- Direct the applicant to make all possible reductions in output of contaminants, and remind the applicant that contamination concerns are grounds for rejecting the application.

- If any likely contaminants remain, require an environmental monitoring program, and a cleanup and habitat restoration plan.

- Include standard language for indemnification from contamination in all agreements.

For use authorizations for sites with existing contamination, the applicant must, at a minimum, assure the department that the activities will cause no increase or spreading of contamination and will not inhibit future cleanup efforts. The application will be favored if the applicant also provides for a net cleanup of contamination.

In cases when the use has potential for new contamination, the applicant must – at minimum – minimize the potential contamination, have a satisfactory monitoring program, make regular reports on the results of the monitoring, guarantee cleanup and remediation of any contamination and restoration of the habitat, and contractually release the state from any liability for the contamination. The department must address contamination concerns before closing the lease to identify any contamination for which the lessee should be held responsible. Even with these precautions, the application

may be rejected if, for example, it causes significant harm to a functioning ecosystem or critical habitat, such as salmon feeding and spawning areas.
SEE ALSO: Use authorizations.

Shellfish

Discussion on shellfish

Shellfish are one of the most valuable renewable resources on state-owned aquatic lands, and harvesting shellfish is a popular recreational activitiy. Recreational harvesting requires a permit from the Washington Department of Fish and Wildlife and commercial harvesting also requires a use authorization. When authorizing uses of state-owned aquatic lands, the department must consider the effects on shellfish. In fact, shellfish are an excellent indicator of the health of the ecosystem in general. Outfalls especially can render shellfish unharvestable for health reasons. SEE ALSO: Renewable resources; Public use and access; Regulatory agencies and permits; Use authorizations; Environmental protection; Outfalls.

SHELLFISH: GEODUCKS

SEE: Geoducks

SHELLFISH: LEASING FOR COMMERCIAL SHELLFISH CULTIVATION

SEE: Aquaculture

SHELLFISH: THEFT

RCW 79.96.130: Wrongful taking of shellfish from public lands--Civil remedies.

(1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, then the person shall be liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, then the person shall be liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish:

(a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands;

(b) without reporting the harvest to the department of fish and wildlife or the department of natural resources where such reporting is required by law or contract;

(c) outside the area or above the limits that an agreement or contract from the department of natural resources allows the harvest of shellfish from public lands; or

(d) without a lease or purchase of the shellfish where such lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department of natural resources may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.96.080.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken. The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department of natural resources or the department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of regulations of the department of fish and wildlife.

Discussion on shellfish: theft

On lands that are not open for public harvesting, if a person knowingly or “wrongfully” takes shellfish from state-owned aquatic lands without a permit or lease, the person is liable for damages triple the fair market retail value of the amount of shellfish taken. If the person was unaware that they needed a permit or lease, then the person is liable for damages double the fair market value of the amount of shellfish taken. If theft of shellfish occurs on aquatic lands managed by the department, land managers should work with regional enforcement staff, who in turn will work with the appropriate enforcement agency (tribes, county or WDFW). SEE ALSO: Unauthorized uses.

Shorelands

RCW 79.90.040: "First class shorelands."

Whenever used in chapters 79.90 through 79.96 RCW the term "first class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between

the line of ordinary high water and the line of navigability, or inner harbor line where established and within or in front of the corporate limits of any city or within two miles thereof upon either side.

RCW 79.90.045: "Second class shorelands."

Whenever used in chapters 79.90 through 79.96 RCW the term "second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city.

WAC 332-30-106 Definitions.

(33) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.

(46) "Ordinary high water" means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.

Discussion on shorelands

Shorelands are part of state-owned aquatic lands, and are generally those areas along the shores of rivers and lakes. In most cases, they are treated identically to tidelands. SEE ALSO: State-owned aquatic lands; Tidelands.

Shorelands and tidelands are classified as either first or second class. The class designation indicates the location of the site relative to the boundaries of incorporated city limits. First-class shorelands and tidelands are within two miles of incorporated city limits. Second-class shorelands and tidelands are more than two miles from the boundary of incorporated city limits. As city limits change, the classification of a given area of land may change. Besides location, the most important difference between first and second class shorelands and tidelands is that upland owners abutting first class shorelands and tidelands have a preference right to lease those lands. For more information on leasing preferences, SEE ALSO: Use authorizations.

The line of navigability is the boundary that separates bedlands from shorelands on navigable lakes and rivers. This is not based on a low water point, as with tidelands. Instead, it is based on where watercraft typical for that waterbody can be, and historically have been, safely operated. Although this line can be designated by the department, it can be finally determined only by a court. SEE ALSO: Navigation.

For many years, shorelands were routinely sold by the state. Today, approximately 74 percent of the state's shorelands remain in public ownership. In 1971, the Legislature prohibited the sale of first class shorelands except to other public entities, and then only if the land will be used solely for municipal or state purposes. In 1982, the legislature authorized the sale of second-class shorelands on lakes to private owners of abutting uplands if the sale is not in the public interest, as determined by the Board of Natural Resources. However, the department rarely sells second class shorelands. For more information on sales of aquatic lands, SEE ALSO: State-owned aquatic lands.

Shoreline Management Act

Discussion on Shoreline Management Act

The state Shoreline Management Act (SMA) requires local governments to designate and permit land uses along the state's shorelines. These local plans are called Shoreline Master Programs (SMPs). Water bodies covered by the act include:

- Lakes, including reservoirs, of 20 acres or more.
- Streams and rivers with a mean annual flow of 20 cubic feet per second or greater.
- Marine waters, including tidal and estuarine waters.

The act covers the water areas as well as a shoreline area landward of each of the above listed waters for 200 feet

measured on a horizontal plane from the ordinary high water mark, and all associated marshes, bogs, swamps, and river deltas.

The guidelines for developing local shoreline management plans are in the process of being updated. Once adopted, all local Shoreline Master Programs will need to be revised within two to three years to incorporate changes from the new guidelines. The revision process is an important opportunity for the department to help maintain consistency with local planning and the requirements for managing state-owned aquatic lands.

With regard to Shoreline Master Programs, land managers should:

- Read and be familiar with all Shoreline Master Programs for their assigned area.
- Be aware of proposed amendments to Shoreline Master Programs. Work with local planning agencies to determine if such amendments will affect state-owned aquatic lands. Be alert to changes which impose greater restrictions on water-dependent uses (such as prohibiting aquaculture) or changes that allow less restrictive uses along the shoreline for nonwater-dependent uses (such as smaller residential setbacks).
- Notify the Region growth management coordinator and the Division of upcoming proposed amendments and opportunities to comment on them.
- Evaluate proposed uses of state-owned aquatic lands to determine whether they are consistent with the local Shoreline Master Plan, or whether a variance or conditional use authorization would be required.

SEE ALSO: Growth Management Act; Aquatic land use planning.

State Environmental Policy Act

Discussion on State Environmental Policy Act

The State Environmental Policy Act (SEPA) is intended to ensure that environmental values are considered by state and local government officials making decisions about plans and projects. The department is usually not the lead agency on a SEPA process, unless the project requires only a use authorization and does not require any regulatory permits, or unless the project is being undertaken by the department itself. Otherwise, an environmental regulatory agency is usually the lead. It is important for the department to comment to the lead agency on environmental concerns during the SEPA process to protect the department's legal rights to take action on these concerns later.

The first step in the SEPA process is a determination of whether the proposal involves an "action" on the part of an agency. An "action," as described in WAC 197-11-704, includes:

- New or continuing activities financed, assisted, conducted, regulated, licensed or approved by an agency.
- New or revised agency rules, plans, policies or procedures, and legislative proposals.

Project actions are generally a construction or management activity located in a defined geographic area. Examples of project actions include:

- Construction of a marina
- Construction of docks and piers
- Siting of aquaculture net pens
- Construction of a breakwater
- Cleanup of contaminated sediments

Non-project actions generally involve decisions on policies, plans and programs that contain standards controlling use or modification of the environment. Examples of non-project actions include:

- Zoning ordinances
- Growth Management Plans
- Shoreline guidelines
- Baywide plans
- Water or sediment quality standards

A few actions that affect aquatic lands have categorical exemptions; that is, the entire category is exempt from SEPA review. These include minor repair or replacement of structures, but do not include new installation of structures. Examples of minor repair activities might include the repair of pilings, ramps, floats or mooring buoys. However, categorical exemptions do not apply if a project is in a designated environmentally sensitive area, or if a project consists of a series of actions, some of which are not exempt or which together may have a probable significant adverse environmental impact.

If an action triggers SEPA, then a lead agency is chosen to be responsible for complying with SEPA's procedural requirements. For private projects requiring permits or approvals from more than one agency, including a city, county or special district, the lead agency is usually the city, county or special district. For private projects requiring permits only from state agencies, the lead agency is one of the state agencies requiring a permit. Because the department does not issue permits for state-owned aquatic lands, but rather grants proprietary authorizations, the department will not usually be the lead agency.

The lead agency evaluates the types of impacts the project will have on the environment. This process may involve a variety of documents, including:

- Scoping Notices. A scoping notice discusses the broad outlines of the activity and its potential environmental impacts, and is prepared before a more complete Environmental Impact Statement. It can be extremely valuable to comment on a scoping notice because it is the earliest opportunity to raise concerns, and such concerns can guide the more thorough analysis performed later.

- Environmental Checklist. This checklist is a brief overview of potential environmental impacts, and is used to determine whether a full Environmental Impact Statement is needed.

- Determination of Non-Significance (DNS). If it is determined that the activity will not have significant adverse environmental impacts, a DNS will be issued. The department can comment and disagree with the determination. However, if the department disagrees, the department must become the lead agency on an environmental impact statement, which can be a major project. The department needs to determine the significance of the environmental concerns relative to the resources needed for that project. The department may often instead seek to address any remaining environmental issues through the use authorization required for activities on state-owned aquatic lands.

- Environmental Impact Statement (EIS). If it is determined that the project will have a "probable significant adverse environmental impact," an EIS will be required. This is a document that looks at potential environmental problems that would be caused by the activity, ways the activity could be changed to avoid or minimize problems, alternatives to the activity, and options for mitigating probable adverse environmental impacts. This process generally includes a draft EIS (DEIS), an opportunity for comments, and a final EIS (FEIS).

STATE ENVIRONMENTAL POLICY ACT: THE DEPARTMENT'S PROCESS

Discussion on State Environmental Policy Act: the department's process

The department is currently reviewing how it takes part in the SEPA process, and what should be the roles of various parts of the department. In particular, the role of the newly formed Environmental Quality and Compliance Division must be determined.

In the meantime, Regions, in consultation with the Division, should take the lead in responding on behalf of the department to project actions within each Region, and the Division should take the lead on non-project actions. Division staff may coordinate responses that involve more than one Region. The department SEPA Center may coordinate responses that involve more than one division. On many occasions, however, especially for major projects, the division of responsibility will not be cleanly defined. Division and Region staff must coordinate on a case-by-case basis to insure that proper responses are given to actions with potentially significant impacts to state-owned aquatic lands.

With regard to SEPA, staff should:

- Be routinely involved with local governments to find out about potential projects being planned by local governments or being permitted by local governments.

- Be routinely involved with other state agencies who are involved with approving projects (such as Ecology or Fish & Wildlife) or proposing projects (such as Transportation). This will allow early knowledge about potential projects affecting state-owned aquatic lands.

- Read the SEPA register to look for proposed projects affecting state-owned aquatic lands. The register is

updated each business day by the Department of Ecology. The Internet address is http://www3.dis.wa.gov/SEPA. Also, the Division has been compiling and distributing notices of interest. Regardless of such efforts, it is the land manager's responsibility to identify and be aware of proposals affecting their assigned areas.

Bring the project to the attention of the land manager's supervisor, the department's SEPA Center, the Region SEPA coordinator, and Division SEPA coordinator. Major projects may require a coordinated review, and if so, these projects must be raised to Executive Management either for information or for direct policy involvement.

Review the various documents produced through the SEPA process. In particular, pay close attention to scoping notices and draft environmental impact statements so the department's comments can be thoroughly addressed in final EISs.

If public hearings are held on a project or non-project action which will significantly affect state-owned aquatic lands, the department should be present at the hearings and prepared to offer comments and concerns. When a project has the potential to have major impacts on state-owned aquatic lands, work with the Region or Division Manager and SEPA coordinators on the comments to be submitted. Such comments should be coordinated between the Region and the Division. Comments should be thorough, diplomatic and submitted in a timely fashion. Copies of comments should be forwarded to the department SEPA Center, Region SEPA coordinator, and Division SEPA coordinator. SEE ALSO: National Environmental Policy Act.

State-owned aquatic lands

Washington State Constitution, Article XVII, Tide Lands

 # Section 1. Declaration of State Ownership.
The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: PROVIDED, that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the court of the state.

 # Section 2. Disclaimer of Certain Lands.
The state of Washington disclaims all title in and claim to all tide, swamp and overflowed lands, patented by the United States: PROVIDED, the same is not impeached for fraud.

Washington State Constitution, Article XXVII, Schedule

 # Section 2. Laws in Force Continued.
All laws now in force in the Territory of Washington, which are not repugnant to the Constitution, shall remain in force until they expire by their own limitation, or are altered or repealed by the legislature: PROVIDED, that this section shall not be so construed as to validate any act of the legislature of Washington Territory granting shore or tide lands to any person, company or any municipal or private corporation.

RCW 79.90.450: Aquatic lands--Findings.

The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department of natural resources the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with

conflicting use demands. The purpose of RCW 79.90.450 through 79.90.545 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands.

RCW 79.90.465: Definitions.

(12) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under RCW 79.90.475 by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources.

Discussion on state-owned aquatic lands

State-owned aquatic lands are included in the term "public lands," but not in the term "state lands," as those lands are used in statute. State-owned aquatic lands include tidelands, shorelands, bedlands, harbor areas, and waterways. SEE ALSO: Public lands; State lands; Tidelands; Shorelands; Bedlands; Harbor areas; Waterways.

STATE-OWNED AQUATIC LANDS: LEASING

SEE: Use authorizations

STATE-OWNED AQUATIC LANDS: MANAGEMENT GOALS

SEE: Public benefits

STATE-OWNED AQUATIC LANDS: SALES

RCW 79.94.150: First and second class tidelands and shorelands and waterways of state to be sold only to public entities-- Leasing--Limitation.

(1) This section shall apply to:

(a) First class tidelands as defined in RCW 79.90.030;

(b) Second class tidelands as defined in RCW 79.90.035;

(c) First class shorelands as defined in RCW 79.90.040;

(d) Second class shorelands as defined in RCW 79.90.045, except as included within RCW 79.94.210;

(e) Waterways as described in RCW 79.93.010.

(2) Notwithstanding any other provision of law, from and after August 9, 1971, all tidelands and shorelands enumerated in subsection (1) of this section owned by the state of Washington shall not be sold except to public entities as may be authorized by law and they shall not be given away.

(4) Nothing in this section shall:

(a) Be construed to cancel an existing sale contract;

(b) Prohibit sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands;

(c) Prevent exchange involving state-owned tide and shore lands.

RCW 79.94.160: Sale of state-owned tide or shore lands to municipal corporation or state agency--Authority to execute agreements, deeds, etc.

The department of natural resources may with the advice and approval of the board of natural resources sell state-owned tide or shore lands at the appraised market value to any municipal corporation or agency of the state of Washington when said land is to be used solely for municipal or state purposes: PROVIDED, That the department shall with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to affect such sale or exchange.

Discussion on state-owned aquatic lands: sales

Numerous statutes – including RCW 79.90.090, RCW 79.90.100, RCW 79.90.110, RCW 79.94.080, RCW 79.94.090, RCW 79.94.270, and RCW 79.94.310 –

discuss the rules and procedures for selling state-owned tidelands or shorelands. However, all these statutes have been overruled by RCW 79.94.150, which prohibits such sale to anyone other than a public entity. Furthermore, RCW 79.94.160 requires that such sales be solely for public use. If such lands are to be sold to a public entity for public use, refer to the above listed RCWs for the rules and procedures. There are two exceptions: second class tidelands may be sold under certain conditions; and accreted tidelands and shorelands may be sold to the owner of adjacent tidelands or shorelands (see below).

STATE-OWNED AQUATIC LANDS: SALES OF ACCRETED TIDELANDS OR SHORELANDS

RCW 79.94.310: First and second class tide or shore lands-- Accretions--Lease.

Any accretions that may be added to any tract or tracts of tide or shore lands of the first or second class heretofore sold, or that may hereafter be sold, by the state, shall belong to the state and shall not be sold, or offered for sale, unless otherwise permitted by this chapter to be sold, and unless the accretions shall have been first surveyed under the direction of the department of natural resources: PROVIDED, That the owner of the adjacent tide or shore lands shall have the preference right to purchase said lands produced by accretion, when otherwise permitted by RCW 79.94.150 to be sold, for thirty days after said owner of the adjacent tide or shore lands shall have been notified by registered mail of his preference right to purchase such accreted lands.

Discussion on state-owned aquatic lands: sales of accreted tidelands or shorelands

An exception to the above rules is when accretions add to tidelands or shorelands which the state previously sold, as described above. This may happen if sediment washed onto the tidelands or shorelands making the extreme low tide line or line of navigability further from shore. In this case, the

new tidelands or shorelands belong to the state, but the owner of adjacent tidelands or shorelands has a preference right to purchase them. SEE ALSO: Tidelands; Shorelands. For more information on preference rights, SEE ALSO: State-owned aquatic lands.

STATE-OWNED AQUATIC LANDS: SALES OF SECOND-CLASS TIDELANDS

RCW 79.94.210: Second class shorelands on navigable lakes-- Sale.

(1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest: PROVIDED, That the purpose of this section is to remove the prohibition contained in RCW 79.94.150 regarding the sale of second class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.94.150, the department of natural resources may sell second class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board of natural resources has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum depth of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this

section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days after the mailing of notification by the department to the owner regarding the price. The board of tax appeals shall review such cases in an adjudicative proceeding as described in chapter 34.05 RCW, the administrative procedure act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW 34.05.510 through 34.05.598.

WAC 332-30-119: Sale of second class shorelands.

(1) Under RCW 79.01.474 state-owned second class shorelands on lakes legally determined or considered by the department of natural resources to be navigable, may be sold to private owners of abutting upland property where it is determined by the board of natural resources that the shorelands have minimal public value for uses such as providing access, recreation or other public benefit. The amount of shoreland subject to sale to any one individual shall be the amount fronting a lot within a recorded subdivision plat; or the greater of 100 feet or ten percent of the frontage owned by the applicant outside of a recorded subdivision. However, it shall be in the public interest to retain ownership of publicly-owned second class shorelands on navigable lakes where any of the following conditions exist:

(a) The shorelands are natural, conservancy, or equivalent designated areas under the local shoreline master program.

(b) The shorelands are located in front of land with public upland ownership or public access easements.

(c) Further sales of shorelands would preclude the establishment of public access to the lake, or adversely affect the public use and access to the lake.

(2) Prior to the sale of second class shorelands on a navigable lake, the department will:

(a) Depict on a suitable map the current ownership of all shorelands and identify those shorelands potentially available for sale as provided under WAC 332-30-119(1).

(b) Identify any privately owned shorelands, acquisition of which would benefit the public.

(c) Identify and establish the waterward boundary of the shorelands potentially available for sale or acquisition.

(d) Make an appraisal of the value of the shorelands potentially available for sale or acquisition in accordance with as many of the following techniques as are appropriate to the parcels in question:

(i) The market value of shorelands as of the last equivalent sale before the moratorium multiplied by the percentage increase in value of the abutting upland during the same period, i.e.,
FMV= (V2/V1) x (S1)
FMV= Current fair market value of shorelands
S1= Value of shorelands at time of last equivalent sale
V1= Value of abutting upland at time of last equivalent shoreland sale
V2= Current fair market value of upland to a maximum of 150 feet shoreward

(ii) Techniques identified in adopted aquatic land management WACs e.g. WAC 332-30-125

(iii) The sales price of the shoreland shall be the fair market value as determined in (2)(d)(i)(ii) but not less than five percent of the fair market value of the abutting uplands, less improvements, to a maximum depth of one hundred fifty feet landward from the line of ordinary high water.

(e) If necessary, prepare a lake management plan in cooperation with local government to guide future department activities on the publicly-owned aquatic lands.

(3) The board of natural resources shall determine whether or not the sale would be in the public interest, and a sales price shall be established by the department of natural resources in a reasonable period of time.

Discussion on state-owned aquatic lands: sales of second-class tidelands

The department, with the approval of the Board of Natural Resources, may sell second class shorelands, but rarely does so, as it is rarely in the public's interest to sell any aquatic lands. Any proposal to do so would need to meet the strict criteria and conditions listed above.

STATE-OWNED AQUATIC LANDS: USES

SEE: Water-dependent uses; Nonwater-dependent uses

STATE-OWNED AQUATIC LANDS: WITHHOLDING FROM LEASING

SEE: Reserves, aquatic

State-wide value

WAC 332-30-100: Introduction.

(1) Management goals. Management of state-owned aquatic lands will strive to:

(a) Foster water-dependent uses;

(b) Ensure environmental protection;

(c) Encourage direct public use and access;

(d) Promote production on a continuing basis of renewable resources;

(e) Allow suitable state aquatic lands to be used for mineral and material production; and

(f) Generate income from use of aquatic lands in a manner consistent with the above goals.

(2) Management methods. To achieve the above, state-owned aquatic lands will be managed particularly to promote uses and protect resources of state-wide value.

(a) Planning will be used to prevent conflicts and mitigate adverse effects of proposed activities involving resources and aquatic land uses of state-wide value. Mitigation shall be provided for as set forth in WAC 332-30-107(6).

(b) Areas having unique suitability for uses of state-wide value or containing resources of state-wide value may be managed for these special purposes. Harbor areas and scientific reserves are examples. Unique use requirements or priorities for these areas may supersede the need for mitigation.

(c) Special management programs may be developed for those resources and activities having state-wide value. Based on the needs of each case, programs may prescribe special management procedures or standards such as lease

auctions, resource inventory, shorter lease terms, use preferences, operating requirements, bonding, or environmental protection standards.

(d) Water-dependent uses shall be given a preferential lease rate in accordance with RCW 79.90.480. Fees for nonwater-dependent aquatic land uses will be based on fair market value.

(e) Research and development may be conducted to enhance production of renewable resources.

WAC 332-30-106 Definitions.

(66) "State-wide value." The term state-wide value applies to aquatic land uses and natural resources whose use, management, or intrinsic nature have state-wide implications. Such uses and resources may be either localized or distributed state-wide. Aquatic land uses of state-wide value provide major state-wide public benefits. Public use and access, renewable resource use and water-dependent use have been cited by the legislature as examples of such uses. Aquatic land natural resources of state-wide value are those critical or uniquely suited to aquatic land uses of state-wide value or to environmental quality. For example, wild and scenic rivers, high quality public use beaches and aquatic lands fronting state parks are of state-wide value for public use and access. Commercial clam and geoduck beds and sites uniquely suited to aquaculture are of state-wide value to renewable resource use. Harbor areas are of state-wide value to water-dependent navigation and commerce. Certain aquatic land habitats and plant and animal populations are of state-wide value to recreational and commercial fisheries, wildlife protection, and scientific study.

Discussion on state-wide value

When weighing many different possible uses of state-owned aquatic lands, especially different uses that might each provide some public benefits, the department will favor uses and resources of "state-wide value." For example, under RCW 79.90.460, "in cases of conflict between water-dependent uses, priority shall be given to...state-wide interests as distinguished from local ones." The definition above lists some things considered to be of state-wide value.

To judge whether other uses or resources have "state-wide implications," staff should consider whether there are opportunities to conduct the use elsewhere in the state away from aquatic lands, whether the resource is rare or at risk of loss in the state, and whether the use or resource significantly contributes to the public benefits of state-owned aquatic lands listed above and in RCW 79.90.455.

As described above, the department may apply "special management procedures or standards" for uses and resources of state-wide values. Within the law, the department has a great deal of authority and opportunity to be creative and flexible in managing state-owned aquatic lands, especially to ensure environmental protection, promote favored uses, and require that applicants provide for other public benefits as a condition of using these lands.

SEE ALSO: Public benefits; Water-dependent uses; Environmental protection.

Submerged artifacts

SEE: Archeological resources.